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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/223,347 12/30/98 BIERRE P P-4286

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IM22/1025

EXAMINER

CROSS, L

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 10/25/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/223,347

Applicant(s)

Blerre et al

Examiner

LaToya Cross

Group Art Unit

1743

☒ Responsive to communication(s) filed on Jul 31, 2000☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- ☒ Claim(s) 1, 3, 4, and 32 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 3, 4, and 32 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

This Office Action is in response to Applicants' amendments filed on July 31, 2000 and entered as Paper No. 7. Claims 1, 3, 4, and 32 are pending in the instant application. Claims 2 and 5-31 were canceled by amendment and claim 32 was newly added.

Status of Rejections from Previous Office Action

The rejection of claims 1-3, 7-11 and 16 under 35 U.S.C. 102b over Kavanaugh '786 is withdrawn in view of Applicants' arguments that the reference does not teach a container.

The rejections of claims 1-3, 7-11 and 16 under 35 U.S.C. 103 over Kavanaugh '786 in view of De Rossett '115 and the rejection of claims 4-6 and 12-15 under 35 U.S.C. 103 over Kavanaugh in view of De Rossett '115 and Handly '410/Richman '356 are withdrawn in view of Applicants' arguments concerning the primary reference, Kavanaugh '786.

The rejection of claims 1-16 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendments to the claims to further clarify the claimed invention.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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2. Claims 1, 3, 4, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,842,153 to Hulon (hereinafter to as Hulon '153) in view of U.S. Patent 5,683,786 to Kavanaugh (hereinafter Kavanaugh '786).

Hulon '153 discloses a container for holding biological samples. The container comprises a first tubular section having a closed end, and a second tubular section which is integrally connected to the first tubular section. The outer tubular section has identification information integrally imprinted on the exterior surface to help in identifying the contents and other essential information concerning the sample.

Hulon '153 differ from the instantly claimed invention in that there is no disclosure of specular reflectance on the outer wall of the container or the identification information.

Kavanaugh '786 teaches a method of identifying a biological sample wherein a slide is provided having a unique identifier where the specular reflectance differ. The method of Kavanaugh '786 uses laser etching to provide the identifier. Light is detected and sensed by the container and information concerning the identification is associated with the container.

It would have been obvious to one of ordinary skill in the art to use the concepts of laser etching and specular reflectance on the container provided by Hulon '153 since the identification process of Kavanaugh '786 would provide a more accurate manner for labeling biological samples and a manner in which the labeling may not be tampered with.

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Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious within the meaning of 35 U.S.C. 103 in view of the teachings of Hulon '153 and Kavanaugh '786.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 3, 4, and 32 have been considered but are moot in view of the new ground(s) of rejection.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is (703) 305-7360. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached at (703) 308-4073. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

LIC *SW*
October 23, 2000

Jan Ludlow
JAN LUDLOW
PRIMARY EXAMINER